

SUMMARY

QUESTION: What items billed by the Taxpayer are subject to sales tax?

ANSWER - Based on Facts Below: Video and audio tapes are tangible personal property. The sale, production, processing, or fabrication of the tapes are considered to be a sale of tangible personal property and is subject to sales tax. Only the amounts paid for tangible elements are subject to the sales tax if the exemption provided for by section 212.08(12), F.S., applies. A certificate of exemption of the Department must be obtained for the exemption to apply. Otherwise, for fixed price contracts the entire amount billed by the Taxpayer is subject to sales tax.

When a customer does not specifically contract for a video creation but is seeking design and consulting services, the tax is not due when there is no transfer of tangible personal property of consequence. In this instance, based on the documentation created, this includes the charges for story research, story development, story formalization, script writing, storyboard images, casting, finalization, and rough storyboards from the customer's image. The charge for the formal storyboard, layout drawings, sketches, and other artwork transferred to the customers as tangible personal property are subject to sales tax. However, when the items are not transferred as tangible personal property, then the charge is not taxable. The charge for venue acquisition is taxable. The charges for production and post production are subject to sales tax. The charges for copies are subject to tax.

September 8, 2005

Subject: Technical Assistance Advisement 05A-037

Video production

Sales and Use Tax

XXX(Taxpayer)

FEI# XX

Section 212.02, F.S.

Section 212.06, F.S.

Section 212.08(12), F.S.

Rule 12A-1.085, F.A.C.

Dear:

This response is in regard to your petition requesting the Department's issuance of a Technical Assistance Advisement pursuant to s. 213.22, F.S., and Chapter 12-11, F.A.C., regarding the above referenced matter.

FACTS

Taxpayer produces videos and/or performs audio image production for clients who desire small budget multimedia presentations. The presentations are a video including music, a "voiceover pitch," and text and graphics. In general,

the videos require story development, script writing, storyboard and video shooting, editing, and addition of the music and voiceover components. The finished video will be an advertisement, an instructional video, or a documentary.

Taxpayer enters into standard written agreements with customers. The agreements include several documents, which are the basis for the agreement. The agreements provide that the customer's project may include different types of activity, including those characteristic of video or audio image pre-production, video or audio production, and post-production work. The agreement provides that an image capture includes the process of recording images using optical means or computer equipment. The agreement provides that "optical" means to include the use of cameras and scanning devices. The agreement provides that the computer equipment to be used includes image files, artwork, and icons. The agreement provides that an "audio capture" includes the process of recording sounds using "analog or digital" means, primarily by microphone. It may include converting recorded source material to and from digital formats. The agreement provides that analog or digital means to include the use of recorders and computers. The source material includes sound files.

The agreement provides that customers may contract for a fixed price with pre-determined service or labor charge limitations for an entire video project. The fixed price agreements include three price packages for product promotion commercial productions for one minute, two minutes, and three minutes at set prices with fixed times allocated to various activity, such as photography, facilitated story development, story formalization, scripting, in-studio shooting, voiceover recording, editing, and limited encoding and music search.

The agreement also provides that a project may be open ended in scope and cost, The project will require approvals throughout the project. The customer may cancel the agreement at any time. The customer will forfeit the deposit and may be charged a cancellation fee. The agreement provides that the Taxpayer will make well-considered estimates of a project cost during different phases of the project. The estimates may be made at the beginning of the initial storyboard creation consultation. At that time, an estimate for the entire project is made and a non-refundable deposit is required.

The customer may also receive an estimate of costs of a project after a storyboard and script are formalized, reviewed, and approved by a customer. The projects including audio require review of the actual lecture and instruction materials. When the formalized storyboard, script, and lecture materials are accepted, the scope of the project can be determined. After the approval, the Taxpayer begins production of the video or audio. Customers may also receive the estimation of the cost of a project after the completion of all of the image and audio capture sessions.

The invoices provide for hourly charges for story research and story development sessions. The story development meetings end with the development of a rough storyboard for the entire project. This includes proposed scripting, sound tracks, voiceovers, and camera work. The sessions involve brainstorming, data gathering, and story development. The Taxpayer considers this creative process to be crucial to the success of the overall video presentation. The customer supplies images of the company equipment and products to appear in the presentation. The images may be photos, detailed drawings, or printed company material. The Taxpayer may create paper documents with images or scripts, such as layout sketches, flip charts, and scratch paper. If the customer has not supplied images of the customer's equipment, products, and personnel to appear in the presentation, the customer may request the Taxpayer to take photographs. The Taxpayer's photography fee is based upon the difficulty of the

location, number of shots, and processing costs. A review of the storyboard is made by the Taxpayer and customer for approval. The Taxpayer creates internal documents on paper, such as approval forms or product rights releases that are signed by the customer. The Taxpayer also creates drawings to design the lighting and sound for the production location.

After this approval, the rough storyboard and script are then formalized. The Taxpayer converts the rough storyboard into a formatted storyboard using special computer software. The end product is a storyboard suitable for production phase. The dialogue from the rough storyboard is used to make a written script from special word processing templates. The end product is a script suitable for on-screen personnel and voice-over talent. The formal storyboard and script are reviewed to ensure all details were captured in a manner acceptable to the customer. The customer pays additional costs for subsequent changes that require modifications to the formal storyboard or scripts.

Hourly charges for story formalization relate to the development of the formal storyboard. It includes the blocking for the camera and talent. Talent includes charges for casting, which requires finding, auditioning, selecting, and preparation of the talent chosen. The first hour for talent is free. Thereafter, an hourly charge is made. The Taxpayer makes no charge for the first seven changes during finalization meetings. Thereafter, hourly charges are made.

Non-refundable deposits are required at different times, including after the initial consultation. If approval of the image and audio capture images are granted, then another deposit is required. The customers may cancel any scheduled activity at any time. The customer will be required to pay a cancellation charge when two days notice is not provided to the Taxpayer. When the customers cancel an entire project, the deposits are forfeited.

The next phase includes the image captures and audio captures. The audio and video captures follow the storyboards and scripts. The production of the image captures and audio captures is conducted at the customer's location. Taxpayer's video, audio, and other equipment are used and controlled by Taxpayer's producer. The Taxpayer has creative control of the production, so long as it generally adheres to the formal storyboard, scripting, and camera work. The Taxpayer's producer meets the customer's representative to review and secure approval of the raw images. The Taxpayer's producer and the customer's representative will jointly compare the images to their corresponding storyboard, scripting, sound tracks, voiceovers, and camera work. If the Taxpayer deviates from the storyboard, scripting, sound tracks, voiceover, and camera work, then no additional charge is made when there is a re-shoot. Additional charges may be imposed on the customers if they require an alteration requiring additional production. For audio captures, the Taxpayer will provide a sound engineer and may provide Voice talent for an additional charge.

The Taxpayer is provided all images to be used in the post production editing. The images are sent as data files or may be scanned. The final video product is enhanced by visual effects and on-screen text and by music and sound effects. The sound engineer will make audio selections from all captured sounds to best coincide with the storyboard and script or other prepared materials. The final audio product may be enhanced by music and sound effects. The Taxpayer's producer and the customer's representative will meet and review the editing made to the videos.

After editing, the images are captured and edited as a high quality image and audio multimedia presentation. The digital video and audio presentations may be encoded for viewing or hearing on CD's, DVD's, removable zip disk drive, or through the Internet using widely available free computer presentation players. At the customer's request, it

may also be recorded on analog VHS tape for viewing on standard definition consumer televisions. The customer's representative and the Taxpayer's producer will review the final product, and the representative will give final approval on the product before it is written to the master media. Upon completion of the all contract obligations, two master copies will be provided, so that the customer may protect its investment. One encoded format is included in the project cost. Encoding in additional formats is offered for additional charge at different rates.

The agreement provides that the services purchased for a project will result in the creation of a customer multimedia or audio only presentation. All right, title, interest, and copyrights in the final product owned by the Taxpayer will be transferred to the customer. Once the customer has possession of the final multimedia presentation product, the client may off-load it and distribute it on any media or method of their choosing. The customer permits the Taxpayer unrestricted use of the non-proprietary portions of the product as a demonstration of the Taxpayer's products and services, without monetary consideration.

Once a video or audio production is completed, a customer may request multiple copies in addition to the basic final video or audio product that the Taxpayer produces. The copies may be given away or sold by the customer in connection with its business, such as advertisement and promotion of the customer's products or services or for instructional usage of the product or service sold. In some cases, the customer may give the videos for use as a training video, such as with martial arts students.

The Taxpayer's billings include separate pre-production charges for story research, story development, story formalization, script writing, storyboard images, finalization, casting, and venue acquisition. Production charges include charges for video capture, audio capture, voice talent, travel compensation, video editing, audio editing, and music search or buy-out. The invoice billing provides for miscellaneous charges for duplications, photographs, or other items.

TAXPAYER REQUEST

The Taxpayer requests advice as to the sales and use tax application to all charges included on the billings to the customers. The Taxpayer requests advice as to the sales and use tax application to deposits collected and the cost of paper documents created. The Taxpayer would like to know whether tax is due on the purchases of materials incorporated into the final product, such as the discs, magnetic tape, labels, ink, and packaging.

The Taxpayer would like to know if the response is different if the customer provides the tangible medium to make the final products, if the product is sent by email, or if the delivery is made to a third party.

APPLICABLE STATUTES AND RULES

Section 212.05(1)(a)1.a., F.S., provides that every person is exercising a taxable privilege who engages in the business of selling or renting tangible personal property at retail. For the exercise of such privilege, the tax is levied on the sales price of each item of tangible personal property sold. Section 212.031, F.S., provides, "that every person is exercising a taxable privilege who engages in the business of renting, leasing, letting, or granting a license for the use of any real property," and such person is required to collect the sales tax on the rental or license fee charged. Section

212.02(15),(16), and (19), F.S., provides in part:

(15) "Sale" means and includes:

(a) Any transfer of title or possession, or both, exchange, barter, license, lease, or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration. ...

(c) The producing, fabricating, processing, printing, or imprinting of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing, or imprinting. (Emphasis added)

(16) "Sales price" means the total amount paid for tangible personal property, including any services that are a part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser by the seller, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service cost, interest charged, losses, or any other expense whatsoever. "Sales price" also includes the consideration for a transaction which requires both labor and material to alter, remodel, maintain, adjust, or repair tangible personal property.... (Emphasis added)

(19) "Tangible personal property" means and includes personal property which may be seen, weighed, measured, or touched or is in any manner perceptible to the senses

Section 212.06(l)(a) and (b), F.S., provides in part the following:

(1)(a) The aforesaid tax at the rate of 6 percent of the retail sales price as of the moment of sale ... shall be collectible from all dealers as herein defined on the sale at retail The full amount of the tax on a credit sale, installment sale, or sale made on any kind of deferred payment plan shall be due at the moment of the transaction in the same manner as on a cash sale.

(b) Fabrication labor shall not be taxable when a person is using his or her own equipment and personnel, for his or her own account, as a producer, subproducer, or coproducer of a qualified motion picture. For purposes of this chapter, the term "qualified motion picture" means all or any part of a series of related images, either on film, tape, or other embodiment, including, but not limited to, all items comprising part of the original work and film-related products derived therefrom as well as duplicates and prints thereof and all sound recordings created to accompany a motion picture, which is produced, adapted, or altered for exploitation in, on, or through any medium or device and at any location, primarily for entertainment, commercial, industrial, or educational purposes. This exemption for fabrication labor associated with production of a qualified motion picture will inure to the taxpayer upon presentation of the certificate of exemption issued to the taxpayer under the provisions of s. 288.1258....

Section 212.17(3), F.S., provides:

(3) A dealer who has paid the tax imposed by this chapter on tangible personal property or services may take a credit or obtain a refund for any tax paid by the dealer on the unpaid balance due on worthless accounts within 12 months

following the month in which the bad debt has been charged off for federal income tax purposes. If any accounts so charged off for which a credit or refund has been obtained are thereafter in whole or in part paid to the dealer, the amount so paid shall be included in the first return filed after such collection and the tax paid accordingly.

Section 212.08(7)(v)l., and (12), F.S., provides:

(7)(v) Professional services.--

1. Also exempted are professional, insurance, or personal service transactions that involve sales as inconsequential elements for which no separate charges are made. ...

(12) PARTIAL EXEMPTION; MASTER TAPES, RECORDS, FILMS, OR VIDEO TAPES.--

(a) There are exempt from the taxes imposed by this chapter the gross receipts from the sale or lease of, and the storage, use, or other consumption in this state of, master tapes or master records embodying sound, or master films or master video tapes; except that amounts paid to recording studios or motion picture or television studios for the tangible elements of such master tapes, records, films, or video tapes are taxable as otherwise provided in this chapter. This exemption will inure to the taxpayer upon presentation of the certificate of exemption issued to the taxpayer under the provisions of s. 288.1258.

(b) For the purposes of this subsection, the term:

1. "Amounts paid for the tangible elements" does not include any amounts paid for the copyrightable, artistic, or other intangible elements of such master tapes, records, films, or video tapes, whether designated as royalties or otherwise, including, but not limited to, services rendered in producing, fabricating, processing, or imprinting tangible personal property or any other services or production expenses in connection therewith which may otherwise be construed as constituting a "sale" under s.212.02.

2. "Master films or master video tapes" means films or video tapes utilized by the motion picture and television production industries in making visual images for reproduction.

3. "Master tapes or master records embodying sound" means tapes, records, and other devices utilized by the recording industry in making recordings embodying sound.

4. "Motion picture or television studio" means a facility in which film or video tape productions or parts of productions are made and which contains the necessary equipment and personnel for this purpose and includes a mobile unit or vehicle that is equipped in much the same manner as a stationary studio and used in the making of film or video tape productions.

5. "Recording studio" means a place where, by means of mechanical or electronic devices, voices, music, or other sounds are transmitted to tapes, records, or other devices capable of reproducing sound.

6. "Recording industry" means any person engaged in an occupation or business of making recordings embodying

sound for a livelihood or for a profit.

7. "Motion picture or television production industry" means any person engaged in an occupation or business for a livelihood or for profit of making visual motion picture or television visual images for showing on screen or television for theatrical, commercial, advertising, or educational purposes.

Section 288.125, F.S., provides:

For the purposes of ss. 288.1251-288.1258, the term "entertainment industry" means those persons or entities engaged in the operation of motion picture or television studios or recording studios; those persons or entities engaged in the preproduction, production, or postproduction of motion pictures, made-for-TV motion pictures, television series, commercial advertising, music videos, or sound recordings; and those persons or entities providing products or services directly related to the preproduction, production, or postproduction of motion pictures, made-for-TV motion pictures, television series, commercial advertising, music videos, or sound recordings, including, but not limited to, the broadcast industry.

Section 288.1258(l), F.S., provides:

(1) PRODUCTION COMPANIES AUTHORIZED TO APPLY.

(a) Any production company engaged in this state in the production of motion pictures, made-for-TV motion pictures, television series, commercial advertising, music videos, or sound recordings may submit an application to the Department of Revenue to be approved by the Office of Film and Entertainment as a qualified production company for the purpose of receiving a sales and use tax certificate of exemption from the Department of Revenue.

(b) For the purposes of this section, "qualified production company" means any production company that has submitted a properly completed application to the Department of Revenue and that is subsequently qualified by the Office of Film and Entertainment.

Rule 12A-1.041(l), F.A.C., provides:

(1) Photographers and photo finishers are engaged in the sale of tangible personal property when developing or printing pictures for sale, or selling completed photographs or photostats or other tangibles personal property. Such persons are required to collect and remit tax on the total amount charged to the customer for the sale of such tangible personal property.

RESPONSE

As provided by section 212.05, F.S., the sale of tangible personal property is subject to sales tax. Section 212.02(19), F.S., defines tangible personal property to include personal property which may be seen, weighed, measured, or touched or is in any manner perceptible to the senses. Video and audio tapes are tangible personal property of which the sale, lease, or license is subject to the tax. Florida Association of Broadcasters v. Kirk, 264 So.2d 437 (Fla. 1st DCA 1972). This also includes sketches made on a bristol board. See Green v. Sgurowsky, 133 So.2d 663 (Fla. 3d

DCA 1961). Rule 12A-1.041(1), F.A.C., provides that photographs are tangible personal property and that the sales tax must be collected on the total charge to make a photograph. Images transferred solely by electronic means, such as over the Internet, are not considered tangible personal property. Department of Revenue v. Quotron Systems, Inc., 615 So.2d 774 (Fla. 3d DCA 1993).

As provided by section 212.02(15)(a), F.S., a sale includes the transfer of title or possession of tangible personal property for a consideration. Section 212.02(15)(c), F.S., also provides that a sale includes the production or processing of tangible personal property for a consideration. This includes when consumers furnish the materials to be produced or processed. Therefore, a sale occurs when tangible personal is transferred or produced for a consideration. Production of tangible personal property includes customized items produced to the customer's specifications. Section 212.06(1)(a), F.S., provides that the sales tax is collectible at the moment of sale. This includes when the contract or agreement is signed.

Section 212.05(1), F.S., provides that the sales tax is computed and collected on the "sales price" of the tangible personal property sold. Section 212.02(16), F.S., defines "sales price" to include the total amount paid for tangible personal property, including any services that are a part of the sale without deduction for labor cost. Section 212.02(16), F.S., also provides that the "sales price" includes services and labor to alter tangible personal property. In American Telephone and Telegraph Company v. Florida Department of Revenue, 764 So.2d 665 (Fla. 1st DCA 2000), in determining whether the sale of services with the sale of tangible personal property were subject to sales tax, the court held and the appellate court affirmed that the sales of services that are inextricably intertwined with the sales of tangible personal property are not separable from the "sales price" as defined by section 212.02(16), F.S, and therefore are subject to the sales tax. All services that are essential to the production of the video are included in the "sales price" of the video, and the sales tax must be collected. Contracts that include a fixed price for specified services to produce the video are subject to the sales tax on the full price at the moment of the sale. This includes, but is not limited to, the three product promotion commercial packages for one minute, two minutes, or three minutes at a predetermined total price. In these examples, no deduction is permitted, and the tax is due on the entire package price. In the event the full amount is not paid, the taxpayer may take a bad debt credit in the manner as prescribed by section 212.17(3), F.S. Since all of the services are essential to the process of making the final end product, which is the master tapes, the charges for services that are part of the sale of the video or audio product are subject to the sales tax. As provided by section 212.02(15)(c), F.S., and section 212.02(16), F.S., items of tangible personal property and labor used to alter tangible personal property are subject to the tax on the full sales price, which includes the service charges related to the alteration of the tangible personal property.

As to section 212.08(7)(v)1., F.S., there is no statutory definition of the term "inconsequential." However, the dictionary defines inconsequential as "inconsequent, of no consequence, lacking worth, significance or importance." Webster's Third New International Dictionary (unabridged edition, 1986 copyright, page 1144), which appears to be consistent with the common understanding of the term. Section 212.08(7)(v)1., F.S., does not apply to the total "sales price" of making the video, because the main object of the agreements is to create a master video to be used in multimedia presentations. The real value to the customer is when the final product, the master video, is completed. At that time, the customer may use the product as intended. The agreement provides that full title to the master video is provided to the customer. As in American Telephone and Telegraph CompAny, supra, the labor to make the video is inextricably intertwined with the production of the master, because without it the tape cannot be made. The court in

Florida Association of Broadcasters, supra, rejected an attempt to divide a finished product into separate components, including an idea, genius, skill, or labor on one hand, and raw material on the other. The opinion provides in part, at 438:

Appellants attempt to distinguish between money paid for the actual physical film and that paid for the right to use the film. The right to use is a license so appellants contend that they are renting intangible personal property rather than tangible personal property. However, as the trial court pointed out, this reasoning is unsound. Every purchase or rental of property is the acquisition of the right to use that property for its intended purposes. Likewise, practically every piece of property subject to rent or sale is a product of someone's original idea and the rental thereof is for the purpose of using it.

Citing the Tennessee Supreme Court in Crescent Amusement Co. v. Carson, 187 Tenn. 112, 213 S.W.2d 27, 29 (Tenn. 1948), the court in Florida Association of Broadcasters, loc. cit., determined the following:

"There is scarcely to be found any article susceptible to sale or rent that is not the result of an idea, genius, skill and labor applied to a physical substance.... If these elements should be separated from the finished product and the sales tax applied only to the cost of the raw material, the sales tax would, for all practical purposes, be entirely destroyed."

In Green v. Sgurovsky, 133 So.2d 663 (Fla. 3rd DCA 1961), an artist received sketches from his customers (which included architects, builders, and ad agencies). The artist transposed the sketches onto bristol board, colored the bristol board, and added additional drawings. The art work was transferred to the customers, on bristol board, to advertise and promote their designs. The court rejected the notion that the preparation and delivery of art work to customers was, in essence, a personal service transaction involving the transfer of the ideas, images, and artistic talent of the commercial artist, rather than a sale of tangible personal property. The court held, at 667:

... Unquestionably personal services of the artist or craftsman furnish or bring about the main value of the product. But it is the product which is sold, and the renderer's services without the product would not be of any value to the architect. The sale cannot be said to be "inconsequential." It is comparable to an artist's preparation and sale of a portrait to a customer. The customer buys the resultant portrait. It is the product which represents the value, after the services have been performed which bring it into being.

Therefore, since the object of the agreement is to make a video, the charges that are essential to making the master video or audio are considered part of the sales price in making tangible personal property.

Agreements involving only design and consulting services that do not involve the transfer or production of tangible personal property are not subject to the tax provided by section 212.05, F.S. This includes agreements solely for the sale of design and consulting services that do not involve the transfer or creation of tangible personal property. This includes the charges for story research, story development, story finalization, script writing, storyboard images, casting, and finalization. When a rough storyboard that is retained by the Taxpayer is made from the customer's image, the charge to make the rough storyboard is not taxable.

The charge for the formal storyboard made to the customer for the duplication of the formal storyboard that is

transferred to the customer is subject to the sales tax, because a sale of tangible personal property is made. The charge by the Taxpayer to prepare the formal storyboard is not taxable, as is the case with the production of the rough storyboard. In both instances, the storyboard is typically retained by the Taxpayer. The script is not considered tangible personal property. This has been the Department's historical position regarding these charges, as provided by Taxpayer Information Publication Number 91AO1-17, dated December 2, 1991. The agreements here provide that the customer can still opt to not proceed further with the project without any further cost than the loss of the deposit. The formal storyboard is tangible personal property and can be taken to another producer. The tax is not required to be collected on the nonrefundable deposits for these items. If the deposit is later applied to a charge that is taxable, then the tax should be charged at that time.

Charges for the sale of the storyboard, layout drawings, sketches, or other artwork to the customers are subject to tax when the items are transferred to the customer, as provided by section 212.02(15)(a) and (c), F.S. This is the case even if the customer decides not to complete the project that would result in the creation of a video or audio on a tangible medium. See Green v. Sgurovsky, supra. If the items are not transferred, then the charge is not for the sale of tangible personal property. Only the costs of the supplies to make the items are subject the tax. The creation of the scripts is considered the sale of professional services involving inconsequential elements of tangible personal property.

The charge for venue acquisition is taxable, as provided by section 212.031, F.S., since the charge is for finding a suitable location for the customer. However, if tax is paid to the location owner on the full amount paid for the venue acquisition, then a credit may be taken on the tax return for the tax billed to the customer for venue acquisition. The exemption provided for by section 212.031(1)(a)9., F.S., for real property used as an integral part of the performance of qualified production services may apply. The exemption only applies if the qualified production services performed on the real property are in connection with the production of a qualified motion picture, as defined in s.212.06(1)(b), F.S. The charge for photography of the images is subject to the sales tax, as provided by Rule 12A-1.041(1), F.A.C., and In Re: Terry A. Renna, Declaratory Statement, Case No. 96-1-DS (June 6, 1996).

The charges on the invoices for the entire charge for production and post production involve the image capture and after-related work to the production of tangible personal property. Therefore, the total amount billed for the items listed in these categories is part of the sales price of the master and is subject to sales tax. This applies even if the master video or audio is delivered electronically when a copy is sent on a medium which is tangible personal property. When the masters are transferred to a third party instead of directly to the customer, the sales tax applies because the rights in the title and possession of the master have been transferred to the customer.

The charges for duplicates and copies are subject to sales tax, because the charge is for the sale of tangible personal property. Items that are physically incorporated into the video or packaging included with the sale may be purchased for resale, as provided by Rule 12A-1.039, F.A.C., of which a copy was previously furnished to you. This includes discs, magnetic tape, labels, and packaging incorporated or accompanying the final product sold. Items not incorporated into the final master video or audio are subject to the tax when purchased. The cost of supplies to make internally used paper forms and other paper documents are subject to the tax when purchased. This applies to the internally created approval forms, products rights release, and drawings for the lighting and sound designs.

Section 212.08(12), F.S., provides a limited exemption of the sale of master video or audio tapes. The requirements of Rule 12A-1.085, F.A.C., must be satisfied to meet the exemption. A copy of this rule was previously furnished to you. The exemption applies to master tape production in connection with the activities provided for by section 288.125, F.S., and section 288.1258, F.S. Section 212.06(1)(b), F.S., provides an exemption for the fabrication labor used to make qualified motion pictures.

This response constitutes a Technical Assistance Advisement under Section 213.22, F.S., which is binding on the Department only under the facts and circumstances described in the request for this advice as specified in Section 213.22, F.S. Our response is predicated on those facts and the specific situation summarized above. You are advised that subsequent statutory or administrative rule changes, or judicial interpretations of the statutes or rules, upon which this advisement is based, may subject similar future transactions to a different treatment than expressed in this response.

You are further advised that this response, your request and related backup documents are public records under Chapter 119, F.S., and are subject to disclosure to the public under the conditions of s. 213.22, F.S. Confidential information must be deleted before public disclosure. In an effort to protect confidentiality, we request you provide the undersigned with an edited copy of your request for Technical Assistance Advisement, the backup material and this response, deleting names, addresses and any other details which might lead to identification of the taxpayer. Your response should be received by the Department within 15 days of the date of this letter.

Sincerely,

Charles Wallace
Senior Attorney
Technical Assistance and Dispute Resolution
(850) 922-4734

CW/lp
Ctrl#13324